

BEFORE THE FEDERAL ELECTION COMMISSION

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

2003 JUL -2 P 1:12

John Hagelin, Ralph Nader,  
Patrick Buchanan, Howard Phillips,  
Winona LaDuke, Natural Law Party,  
Green Party of the United States, and  
Constitution Party,

Complainants,

v.

Commission on Presidential  
Debates, Inc.,

Respondant.

MUR No. \_\_\_\_\_

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RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

COMPLAINT

1. John Hagelin, Ralph Nader, Patrick Buchanan, Howard Phillips, Winona LaDuke, the Natural Law Party, the Green Party of the United States, and the Constitution Party hereby bring this complaint before the Federal Election Commission ("FEC") seeking an immediate FEC investigation and enforcement action against the Commission on Presidential Debates ("CPD") for direct and serious violations of the Federal Election Campaign Act of 1971 ("FECA"), as amended, 2 U.S.C. §§ 431 *et seq.* (1997 and Supp. 1999), which violations occurred during the 2000 elections for the Offices of the President and Vice President of the United States of America, and which directly concern the 2004 federal elections.

Summary of Complaint

2. The CPD is a nonprofit organization that sponsored four debates between the presidential and vice presidential candidates of the Republican and Democratic Parties in the 2000 elections. Federal election law requires a staging organization for

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candidate debates to be both nonprofit and nonpartisan. But the CPD is not a nonpartisan organization, as newly obtained evidence shows. The CPD decided to exclude all third-party candidates from even sitting in the audience of the debates, and it distributed a "face-book" of prominent third-party candidates to CPD personnel at the first presidential debate so they could recognize and deny the candidates access to the debate hall even if they had a ticket. Remarkably, the CPD's admitted intent included depriving all third-party candidates of any opportunity to engage in "campaigning" by virtue of their attending the debate event as spectators (and thus denying them ready availability to the approximately 1,700 news reporters on site). In stark contrast, the CPD benefited the Republican and Democratic Candidates and Parties by providing them with unlimited "campaigning" opportunities.

3. Because CPD operates as a partisan organization, it was neither qualified to stage the debates nor entitled to raise millions of dollars from corporations and other wealthy donors to be spent for the benefit of the Republican and Democratic Parties and their candidates. The CPD also failed to register as a "political committee" and to report its receipts and disbursements as required by the federal election laws, which, among other things, deprived Complainants of important information.

4. These violations of federal law were detrimental to and seriously harmed the Complainants – parties and candidates competing in 2000 against the Democratic and Republican Parties and their candidates for the Presidency and Vice Presidency of the United States. The CPD's ongoing unlawful conduct threatens to similarly harm third-party candidates competing in the 2004 elections.

### Complainants

5. John Hagelin, Ralph Nader, Patrick Buchanan and Howard Phillips were candidates for the Office of the President of the United States of America in the 2000 elections. Winona LaDuke was a candidate for the Office of the Vice President of the United States of America in the 2000 elections. Each of these candidates (along with several others) was pictured and identified by party affiliation, name and candidacy in the CPD's face-book, which was prepared and distributed by the CPD to its personnel for the express purpose of excluding the third-party candidates from the audience of the presidential debates held in Boston, Massachusetts on October 3, 2000. *See Exhibit 1 hereto.*

6. The Natural Law Party, Green Party of the United States, and Constitution Party were each represented by candidates for the Office of the President and Vice President of the United States of America in the 2000 elections. These parties and their candidates, along with other third-parties and their candidates, were specifically identified and targeted for exclusion by the CPD in its face-book. *See id.* The Natural Law Party, Green Party of the United States, and Constitution Party are all likely to nominate and/or intend to run a presidential and vice presidential candidate in the 2004 national elections.

### Respondent

7. The Commission on Presidential Debates, Inc., is a non-profit, 501(c)(3) tax-exempt corporation that is incorporated and based in the District of Columbia. The CPD is located at 1200 New Hampshire, N.W., Box 445, Washington, D.C., 20005.

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### Allegations

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8. The CPD is a nonprofit corporation that sponsored four debates between the presidential and vice-presidential candidates of the Republican and Democratic Parties in the 2000 elections. It raised millions of dollars from corporations and other wealthy donors, and spent those funds in staging the debates. The CPD acted as the staging organization for the debates pursuant to the safe harbor provided in 2 U.S.C. § 431 (9)(B)(ii) which exempts “nonpartisan activity designed to encourage individuals to vote or to register to vote” from the definition of regulated “expenditures.” The FEC has interpreted this statute to permit qualifying staging organizations to sponsor candidate debates as follows: “Nonprofit organizations described in 26 U.S.C. 501(c)(3) or (c)(4) and which do not endorse, support, or oppose political candidates or political parties may stage candidate debates in accordance with this section and 11 C.F.R. 114.4(f).” *See* 11 C.F.R. § 110.13(a). In addition, such a qualifying nonprofit organization may “use its own funds and may accept funds donated by corporations or labor organizations under paragraph (f)(3) of this section to defray costs incurred in staging candidate debates held in accordance with 11 CFR 110.13.” *See* 11 C.F.R. 114.4(f)(1). In this manner a qualifying organization and its donor corporations are exempt from the general prohibition on corporate contributions and expenditures, *see* 2 U.S.C. § 441b (prohibiting corporate donations in federal elections), and other limits. *See* 2 U.S.C § 441a(a), 441a(f).

9. The CPD was founded, and is controlled by the Republican and Democratic Parties and their representatives. At least nine of its eleven board directors are prominent members of the Republican and Democratic Parties, there are no third-

party representatives, and its two co-chairs (dating back to the CPD's founding in 1987) are the former heads of the two major parties' respective national committees. The CPD also operates as a partisan organization, as is evident from its conduct at the first presidential debate held in Boston on October 3, 2000. Before the debate, the CPD leadership decided to exclude all third-party candidates from attending the presidential debates as audience members. See Exhibit 2 hereto at page 50, lines 10-13 (excerpt of deposition transcript of CDP General Counsel Lewis Loss dated October 25, 2001 in the matter of *Nader v. Commission on Presidential Debates, et al.*, Case No. 00-12145-WEY (U.S.D.C. MA 2000) ("...the CPD had decided that Mr. Nader and third-party candidates more generally, even if they had a ticket to the debate, would not be admitted into the debate hall."); see also Exhibit 3 hereto (excerpt of deposition transcripts of CPD co-chair Frank J. Fahrenkopf, Jr. dated December 5, 2001 in *Nader, supra*, at page 26, lines 2-16) (" The position was that third party candidates would not be allowed to be present in the debate hall.... The decision was made by—well there were a number of people in the discussion. But fundamentally, Paul Kirk and I, as co-chairmen, made the final decision [for the CPD]"). Cf. *id.* at page 42, lines 15-19 (Fahrenkopf changing testimony). The decision also applied to all three of the presidential debates and presumptively the vice-presidential debates. See *id.* at pages 26 (line 25) – 27 (line 23). The CPD's general counsel, Lewis Loss, prepared and distributed a "face-book" of prominent third-party presidential and vice-presidential candidates (see Exhibit 1) so that CPD personnel at the debate-hall doors could recognize the candidates and deny them access to the event even if they had a ticket. See Exhibit 2 at pages 57-59.

6543 204 40 42  
24-04-407-3459

10. The CPD intended the exclusion of all third-party candidates from the debate hall to deny these candidates and their parties any "campaigning" opportunities, according to the CPD's general counsel. *See Exhibit 2 at pages 100 (line 20) – 101 (line 8)* ("Our [the CPD's] concern was that if a third-party candidate who had not qualified for participation in the debate went to the trouble to get a ticket and attend the debate that it would be for the purpose of campaigning in some way, which seemed to imply the potential for disruption."). Thus, although both the Republican and Democratic Candidates were clearly engaged in significant campaigning by attending and participating in the nationally-televised political debates, absolutely no "campaigning" by third-party candidates (not even the modicum of campaigning purportedly entailed in attending the debates) would be tolerated by the partisan CPD. Moreover, the CPD's decision was clearly intended to deny third-party candidates any media coverage in the debate hall and/or deny them ready availability to the approximately 1,700 news reporters attending the debates. As such, the CPD acted as a partisan organization to intentionally provide the Republican and Democratic Candidates and Parties with valuable benefits that it denied to all other third-party candidates and their parties, including Complainants.

11. The CPD was founded as a partisan organization (Republicans and Democrats) and its leadership is aware that, to qualify as a debate sponsor, it must be nonpartisan. *See Exhibit 3 at page 20, lines 16-24* ("If we [the CPD] were bi-partisan, we couldn't meet the requirements of the [election] law, as we understood it, by which you qualified to be a sponsor of debates...So it became very clear to us once we [the CPD] were created that we had to be a nonpartisan [organization] even though Paul [Kirk] and I were the party chairmen.").

12. Because the CPD is a partisan organization – as evidenced by its partisan corporate structure, leadership and conduct – its efforts are not exempt under 2 U.S.C. §431(9)(B)(ii), nor does it meet the criteria for a qualifying organization under FECA, 11 C.F.R. 110.13(a)(1). The CPD, by its consistent pattern of exclusionary behavior and conduct, not only opposed presidential candidates and political parties, but it also supported and endorsed political candidates and political parties in violation of 11 C.F.R. 110.13(a).

13. The CPD raised significant monies and had numerous corporate co-sponsors of its debates, including Philip Morris, Anheuser-Busch, AT&T and 3Com. *See* Exhibit 4 hereto. Because the CPD was not a qualified organization under 2 U.S.C. § 431 *et seq.*, 11 C.F.R. 110.13 and 11 C.F.R. 114.4(f)(1), the millions of dollars expended by the CPD in sponsoring and staging the debates were illegal contributions and expenditures to the Republican and Democratic Parties under FECA. *See* 2 U.S.C. § 431(8)(A)(i) (defining the term “contributions” to include “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office”); 2 U.S.C § 431(9)(a)(i) (defining the term “expenditures” to include “any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office”).

14. Additionally, because the partisan CPD raised and expended millions of dollars in funds from corporations and other wealthy donors, it meets the federal definition of a “political committee” which FECA defines as “any committee, club association, or other group of persons which receives contributions aggregating in excess

of \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000 during a calendar year." See 2 U.S.C. § 431(4)(A). The CPD has received contributions far in excess of \$1,000 and has made expenditures far in excess of \$1,000. See ¶13, *supra*. Therefore, the CPD was required by law to register as a political committee and to file reports as to receipts and expenditures. See 2 U.S.C. §§ 433, 434. Because the CPD failed to comply with all these requirements, it is in violation of the reporting provisions, as well as 2 U.S.C. § 441a(a) (defining limitations on contributions and expenditures) and 2 U.S.C. § 441a(f) (prohibiting political committees from accepting contributions or making expenditures in violation of the section).

15. Thus, the CPD has illegally used corporate and other wealthy donors' contributions to the benefit of the Republican and Democratic Parties and their chosen candidates, and to the detriment of the Complainant candidates and parties. It has also failed to make political committee disclosures that are important to the political process and to the Complainants in conducting their campaigns. Each Complainants' ability to compete in the electoral process has thereby been impaired by the CPD's unlawful activities.

16. Upon information and belief, the CPD has already begun planning to sponsor the presidential and vice presidential debates for the 2004 national elections, and has already begun soliciting, and intends to solicit, substantial contributions and other financial support from corporations and other wealthy donors for the purpose of sponsoring its debates. For the same reasons these activities were unlawful for the 2000 debates, they are unlawful now and in the future, and must be stopped immediately to prevent harm to these Complainants and the Nation.

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Count I

17. Complainants incorporate herein by reference the allegations in the preceding paragraphs of this complaint.

18. The Commission on Presidential Debates violated federal law, 2 U.S.C. § 441b, by making expenditures and/or contributions to stage and sponsor the presidential and vice-presidential debates in the 2000 elections for the benefit of Republican and Democratic Parties and their candidates.

Count II

19. Complainants incorporate herein by reference the allegations in the preceding paragraphs of this complaint.

20. The Commission on Presidential Debates violated federal law, 2 U.S.C. § 431(9)(B)(ii) and 11 C.F.R. § 110.13(a), by staging the presidential and vice-presidential debates although it does not qualify to do so because it is a partisan organization that, by its consistent pattern of exclusionary behavior and actions, did "endorse, support or oppose political candidates or political parties...."

Count III

21. Complainants incorporate herein by reference the allegations in the preceding paragraphs of this complaint.

22. The Commission on Presidential Debates violated federal law, 2 U.S.C. § 431(9)(B)(ii) and 11 C.F.R. § 114.4(f), by using its own funds and by accepting funds donated by corporations and other persons to defray costs incurred in staging presidential and vice-presidential candidate debates that were not held in accordance with 11 C.F.R. 110.13.

Count IV

23. Complainants incorporate herein by reference the allegations in the preceding paragraphs of this complaint.

24. The Commission on Presidential Debates violated federal law, 2 U.S.C. § 441a(a), by exceeding the defined limitations on contributions and expenditures.

Count V

25. Complainants incorporate herein by reference the allegations in the preceding paragraphs of this complaint.

26. The Commission on Presidential Debates violated federal law, 2 U.S.C. § 441a(f), by accepting contributions and making expenditures in violation of the section.

Count VI

27. Complainants incorporate herein by reference the allegations in the preceding paragraphs of this complaint.

28. The Commission on Presidential Debates violated federal law, 2 U.S.C. § 433, by failing to register as a political committee even though it received contributions aggregating far in excess of \$1,000 during a calendar year and made expenditures aggregating far in excess of \$1,000 during a calendar year.

Count VII

29. Complainants incorporate herein by reference the allegations in the preceding paragraphs of this complaint.

30. The Commission on Presidential Debates violated federal law, 2 U.S.C. § 434, by failing to report receipts and disbursements as required.

24-04-407-3463

Count VIII

31. Complainants incorporate herein by reference the allegations in the preceding paragraphs of this complaint.

32. The Commission on Presidential Debates, by its continuing acts in preparing to sponsor the presidential and vice-presidential debates for the 2004 national elections, including by holding itself out as a qualified debate staging organization, and by unlawfully soliciting contributions from corporations and others to finance the debates, is violating, or will violate, each of the federal laws and regulations contained in Counts I through VII above.

Prayer for Relief

WHEREFORE, Complainants request that the Federal Election Commission conduct an investigation into these allegations, declare that respondent CPD has violated, and is violating, the federal election campaign laws and take such further action as may be appropriate, including but not limited to the following:

- 1) Notify the CPD that it was not qualified to act as a staging organization for the presidential and vice-presidential debates in the 2000 elections and that it is not so qualified for the 2004 debates or any others;
- 2) Prohibit the CPD from acting as a presidential debate staging organization at any time in the future;
- 3) Direct the CPD to cease and desist all activities as a presidential debate staging organization within the meaning of FECA, including holding itself out as a debate staging organization and raising contributions and making expenditures therefor;

24-04-407-3464

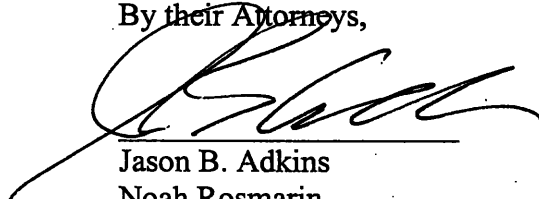
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- 4) Direct the CPD to file reports of receipts and disbursements in accordance with the law for the 2000 presidential and vice-presidential debates;
  - 5) Direct the Republican and Democratic Candidates and Parties to refund the monies the CPD and its sponsoring corporations and wealthy donors improperly contributed to and/or expended for their benefit;
  - 6) Impose sanctions, including but not limited to fines and penalties, against the CPD and any other appropriate persons or parties to the full extent allowed by law; and
  - 7) Provide all other remedies that the Federal Election Commission deems appropriate and that the law requires.

June 17, 2003

Respectfully submitted,

John Hagelin, Ralph Nader,  
Patrick Buchanan, Howard Phillips,  
Winona LaDuke, Natural Law Party,  
Green Party of the United States, and  
Constitution Party,

By their Attorneys,



Jason B. Adkins  
Noah Rosmarin  
**Adkins, Kelston, and Zavez, P.C.**  
90 Canal Street, 5<sup>th</sup> Floor  
Boston, MA 02114  
(617) 367-1040

Bonita P. Tenneriello  
John C. Bonifaz  
**National Voting Rights Institute**  
27 School Street, Ste. 500  
Boston, MA 02108  
(617) 624-3900

Verification

The complainant below hereby verifies that the statements made in the attached complaint are, upon their information and belief, true. Sworn to, pursuant to 18 U.S.C. 1001.

Ralph Nader  
Signature

Ralph Nader  
Name

Sworn to and subscribed before me this  
13 day of June 2003.

My Commission Expires March 14, 2004

My Commission Expires March 14, 2004

Chris Han



24-04-407-3466

Verification

The complainant below hereby verifies that the statements made in the attached complaint are, upon their information and belief, true. Sworn to, pursuant to 18 U.S.C. 1001.

Maduke  
Signature

Winona LaDuke  
Winona LaDuke

Sworn to and subscribed before me this  
13 day of June 2003.

24-04-407-3467

Verification


The complainant below hereby verifies that the statements made in the attached complaint are, upon their information and belief, true. Sworn to, pursuant to 18 U.S.C. 1001.

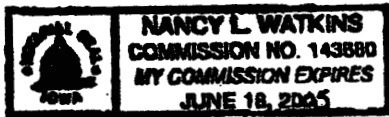
  
John Hagelin

State of Iowa, Jefferson County:

Sworn to and subscribed before me this

16<sup>th</sup> day of June 2003, by John Hagelin, who is personally known to me.

  
Notary Public for Iowa



24-04-1407-3468

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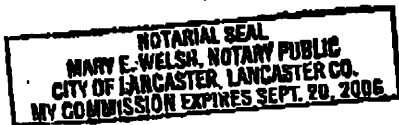
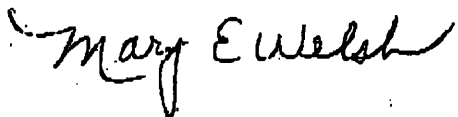
Verification

The complainant below hereby verifies that the statements made in the attached complaint are, upon their information and belief, true. Sworn to, pursuant to 18 U.S.C. 1001.



James Clymer  
on behalf of the Constitution  
Party of the United States

Sworn to and subscribed before me this  
16<sup>th</sup> day of June 2003.

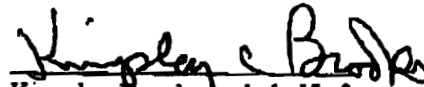


24-04-407-3469



Verification

The complainant below hereby verifies that the statements made in the attached complaint are, upon their information and belief, true. Sworn to, pursuant to 18 U.S.C. 1001.

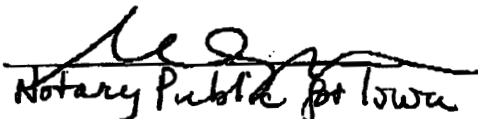


Kingsley Brooks on behalf of  
The Natural Law Party of the United States

State of Iowa, Jefferson County:

Sworn to and subscribed before me this

16<sup>th</sup> day of June 2003, by Kingsley Brooks, who is personally known  
to me.

  
Notary Public for Iowa

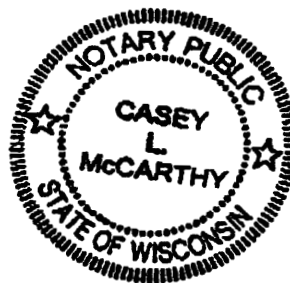
24.04.407.3470

Verification*on behalf of the Green Party of the U.S.*

The complainant below hereby verifies that the statements made in the attached complaint are, upon their information and belief, true. Sworn to, pursuant to 18 U.S.C. 1001.

*Ben Hawski*  
Signature  
*BEN HAWSKI*  
Name

Sworn to and subscribed before me this  
14 day of June 2003.

*Casey McCarthy*

24.04.407.3473

24.04.407 3472

**EXHIBIT 1**

24-04-407-3473

Green



Ralph Nader  
Pres. Candidate



Winona LaDuke  
VP Candidate

Winona LaDuke

Reform



Pat Buchanan  
Pres. Candidate



Ezola Foster  
VP Candidate

Constitution



Howard Philips  
Presidential

Dr. J. Curtis Frazier  
VP  
(Not shown)

Natural Law



John Hagelin  
Pres. Candidate



Nat Goldhaber  
VP Candidate



24-04-407-3474

Miscellaneous



Russ Verney  
Former Reform

CPD0425

24-04-407-3475

EXHIBIT 2

24.04.407.3476

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

RALPH NADER,

Plaintiff,

v.

COMMISSION ON PRESIDENTIAL

DEBATES, PAUL G. KIRK, JR.,

FRANK J. FAHRENKOPF, JR.,

JOHN VEZERIS, and

SERGEANT CHARLES MCPHAIL,

in his individual capacity,

Defendants.

Washington, D.C.

Thursday, October 25, 2001

Deposition of LEWIS K. LOSS, a witness  
herein, called for examination by counsel for  
Plaintiff in the above-entitled matter, pursuant to  
notice, the witness being duly sworn by PENNY M.  
DEAN, a Notary Public in and for the District of  
Columbia, taken at the offices of Crowell & Moring,  
1001 Pennsylvania Avenue, N.W., Washington, D.C., at  
1:25 p.m., Thursday, October 25, 2001, and the  
proceedings being taken down by Stenotype by PENNY M.



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1 investigation in light of the issues raised in the  
2 lawsuit, but I don't remember the details of the  
3 conversation.  
4 MR. MARKS: I wouldn't let you talk about  
5 it anyway.  
6 BY MR. FRIEDMAN:  
7 Q. Do you represent Mr. Keady?  
8 A. No.  
9 Q. Now, we started to go through the  
10 information with regard to disruption. You had been  
11 discussing a meeting that you believe was on the  
12 subject of security in which various protocols had  
13 been mentioned. And you said I believe there was a  
14 need to make some sort of a determination, you  
15 learned there was a protocol of what would be done if  
16 there was a disruption in the Clark auditorium while  
17 the debate was going on and I stopped you to go back  
18 and get information about what fact you might have to  
19 think there could be a disruption.  
20 If we could pick up again at that meeting.  
21 A. The people in the room impressed upon me  
22 that they needed to know what the Commission on  
23 Presidential Debates's position was going to be with  
24 respect to the topic of whether a third-party  
25 candidate would be permitted into the auditorium. I

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1 you then convey a position, you or anyone else for  
2 the Commission on Presidential Debates with regard to  
3 that issue?  
4 A. Yes. I communicated the CPD's decision to  
5 John Vezzeris and my recollection is that Mr. Vezzeris  
6 undertook to communicate it to the pertinent law  
7 enforcement authorities who had expressed a need to  
8 know.  
9 Q. What did you tell John Vezzeris?  
10 A. That the CPD had decided that Mr. Nader  
11 and third-party candidates more generally, even if  
12 they had a ticket to the debate, would not be  
13 admitted into the debate hall.  
14 Q. Did you convey anything else to him at  
15 that time?  
16 A. We discussed who would -- I want to be  
17 clear, we made a decision that was of general  
18 application to third-party candidates, but it really  
19 is the case that our focus was very much on the very  
20 concrete threat that we perceived Mr. Nader posed and  
21 what we understood the very high likelihood that he  
22 was actually going to show up with a ticket -- that  
23 this was very real with respect to Mr. Nader. We  
24 weren't aware of any other concrete threat.  
25 So we discussed specifically who would

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1 words that should be said?  
2 A. We did.  
3 Q. And what words were they?  
4 A. Again I don't remember them on this date  
5 with precision, but it was in the spirit of you're  
6 not an invited guest or something to that effect. I  
7 don't remember all of the wording of the sentence,  
8 but that was the thrust of it. I just don't remember  
9 the exact words that were agreed upon.  
10 Q. Did you discuss with him what would happen  
11 next if he had met with Mr. Nader and told him even  
12 if you have a ticket, you're not an invited guest in  
13 possession of that ticket, what the next step would  
14 be?  
15 A. Yes, I remember very clearly that we  
16 understood that our decision making and the decision  
17 we had been asked to make ended with whether we were  
18 going -- whether it was our position that we would  
19 permit him into the debate hall, but that once that  
20 had been communicated, our part was done, and we  
21 understood at that point that he would step aside and  
22 that he would --  
23 MR. MARKS: When you say he, you're  
24 talking Mr. Vezzeris.  
25 THE WITNESS: Mr. Vezzeris would step aside

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1 think they probably appreciated from my questioning  
2 that I had some serious reservations about a scenario  
3 of admitting such a candidate and trying to control  
4 the disruption in the context of this particular  
5 event with a live television broadcast. But I was  
6 not in a position to make the decision. I told them  
7 I would have to consult with my clients and we  
8 understood they needed to know and that we would let  
9 them know what the CPD's position was.  
10 Q. What time was that meeting?  
11 A. I believe it was -- you know, it was  
12 shortly after I arrived, which I believe was around  
13 noon-ish, so it was early afternoon.  
14 Q. Did you remain in the meeting -- until it  
15 was over or did you --  
16 A. I'm not certain whether at the point I  
17 left the meeting broke up, or whether they continued.  
18 I know I left to go discuss -- to try to discuss this  
19 issue with my clients. I'm not quite sure whether  
20 the rest of the group left or not.  
21 Q. When you say discuss, did you in fact  
22 discuss the issue with some of your clients?  
23 A. Yes.  
24 Q. What clients were they, what individuals?  
25 A. Well, I met with Janet Brown, Paul Kirk

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1 communicate to Mr. Nader when he arrived what the  
2 CPD's position was, and we discussed the words that  
3 would be used.  
4 Q. Was there a conversation with Mr. Vezzeris  
5 alone?  
6 A. Yes.  
7 Q. Where did the conversation take place?  
8 A. In the hallway outside -- again, in this  
9 area that the CPD was using as temporary offices.  
10 Q. To the best of your recollection, can you  
11 tell me what went down during that conversation, what  
12 you said, what Mr. Vezzeris said?  
13 A. He was initially uncomfortable with  
14 playing the role of interacting with Mr. Nader. We  
15 discussed who would do it and it was my view that he  
16 was the appropriate person to it and ultimately he  
17 agreed to do it.  
18 Q. Well, did he tell you that that was not  
19 within the functions he contracted to perform?  
20 A. He did say that.  
21 MR. BURKE: Can I ask Howard to speak up,  
22 please?  
23 MR. FRIEDMAN: I'm sorry, can you hear  
24 that one?  
25 MR. BURKE: I caught the gist of it.

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1 at that point and would not be involved in what  
2 happened next.  
3 BY MR. FRIEDMAN:  
4 Q. Well, if he stepped aside, what was  
5 supposed to happen next?  
6 A. Well, we understood that there would be  
7 law enforcement officials nearby who would at that  
8 point do whatever it is they thought was appropriate  
9 under the circumstances.  
10 Q. Did you understand what agency those law  
11 enforcement people would work for?  
12 A. At the time of this conversation, I don't  
13 think I -- I don't think I did know.  
14 Q. During that conversation, did you tell  
15 Mr. Vezzeris that he been delegated some authority  
16 from the Commission on Presidential Debates?  
17 A. I didn't use those words, but that clearly  
18 was what I was doing.  
19 Q. Is there anything more you can recall  
20 about that conversation with John Vezzeris?  
21 A. Not as I sit here.  
22 Q. Was there any discussion as to whether  
23 anyone would accompany Mr. Vezzeris if he were to go  
24 out and meet with a third-party presidential  
25 candidate?

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1 and Frank Fahrenkopf.  
2 Q. Where did you hold that meeting?  
3 A. It was up in this mezzanine area that was  
4 serving as the CPD's temporary offices. There was an  
5 office at the end of a hallway that had a door and we  
6 met in that office with the door closed.  
7 Q. Was anyone else in the office at that  
8 time?  
9 A. Not in that room, no.  
10 Q. As a result of that meeting, was there  
11 some public statement that you or anyone else was to  
12 make?  
13 MR. MARKS: Objection to the vagueness of  
14 your question.  
15 THE WITNESS: I'm not sure I understand  
16 public statement.  
17 BY MR. FRIEDMAN:  
18 Q. You had a meeting and as I understand it  
19 you understood that the people meeting on security  
20 needed a decision on the people from the Commission  
21 on Presidential Debates what to do with a third-party  
22 candidate who arrived on the campus with a ticket to  
23 the debate?  
24 A. Correct.  
25 Q. After your meeting with your clients, did

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1 BY MR. FRIEDMAN:  
2 Q. What did you say when he told you that it  
3 was his view that this was not within the services  
4 that he had contracted to perform?  
5 A. I told him I had a different view.  
6 Q. You told him that -- did you tell him that  
7 your view was his agreement with the commission  
8 included actually performing security functions by  
9 meeting individuals and checking credentials?  
10 MR. MARKS: Objection to form.  
11 THE WITNESS: I told him that I thought  
12 this particular task we were discussing was one that  
13 fell within the scope of his area of expertise and  
14 what we would like him to do.  
15 BY MR. FRIEDMAN:  
16 Q. Did you discuss alternative individuals  
17 who could meet with Mr. Nader or any other  
18 third-party candidate?  
19 A. I don't recall that he did, but my  
20 recollection is not sharp on that.  
21 Q. What else went down during that  
22 conversation?  
23 A. We discussed the wording that would be  
24 used.  
25 Q. Did you work out a specific -- specific

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1 A. I -- I just don't recall anything specific  
2 on that at this point.  
3 Q. At any point did you tell him that you  
4 would go with him to meet with a third-party  
5 presidential candidate?  
6 A. I don't recall ever saying that to him.  
7 Q. At any point did he suggest that either  
8 you or Janet Brown would be the more appropriate  
9 person to meet with a third-party presidential  
10 candidate who arrived on the campus with a ticket?  
11 A. I don't recall that he did, but it  
12 wouldn't shock me if he did, because as I indicated,  
13 he was not particularly receptive initially to  
14 playing this role. It is entirely possible that he  
15 would have cast it out to someone else. I don't  
16 recall him saying specific names.  
17 Q. When you spoke with Mr. Vezzeris in the  
18 conversation we've just been talking about, did you  
19 discuss what would happen if anyone else other than a  
20 third-party presidential candidate appeared on the  
21 campus with a ticket that had been given to them --  
22 transferred to them by someone who had been given a  
23 ticket, by one of the agencies or entities that give  
24 out those tickets?  
25 A. No.

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1 Q. Was there any plan to intercept any other  
2 people who had been given tickets second or third  
3 hand, if you will?  
4 A. Not that I recall.  
5 Q. To the extent you're aware, I'll use some  
6 names for example, if for example a ticket had been  
7 given by Mr. Kirk of the commission to say Harvard  
8 professor Alan Dershowitz and say he got a call and  
9 had given a ticket to some other Harvard professor.  
10 Was there a system in place to intercept that person  
11 who had been transferred a ticket, to your knowledge?  
12 A. I don't think we would have had a way to  
13 know that.  
14 Q. It was your understanding that after you  
15 spoke to Mr. Vezeris, Mr. Vezeris was to convey the  
16 decision of the commission to other people: is that  
17 correct?  
18 A. Yes.  
19 Q. Did you go with him when he did that?  
20 A. No.  
21 Q. What did you do then?  
22 A. I don't recall.  
23 Q. Did you meet up with Mr. Vezeris later  
24 that day?  
25 A. We undoubtedly crossed paths and spoke a

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1 document.  
2 Q. Did you give a copy to Mr. Vezeris?  
3 A. Likely so, but I don't have a clear  
4 recollection.  
5 Q. At some point did you meet a state police  
6 sergeant named McPhail?  
7 A. I don't know whether I did or not. And --  
8 I mean I know there is a McPhail who is a party to  
9 this lawsuit. I know what you've alleged his role  
10 was. I don't -- I don't really know firsthand who  
11 McPhail was or what he did. I don't have a specific  
12 recollection of having been introduced to  
13 Mr. McPhail.  
14 Q. Did you ever give the document with the  
15 photographs of third-party presidential candidates to  
16 any state police officers or any uniformed police  
17 officers?  
18 A. No, I did not.  
19 Q. After that first security meeting, was  
20 there a second security meeting that you went to on  
21 October 3rd before the presidential debate began?  
22 A. I don't recall a second meeting.  
23 Q. So as far as you can recall, there was no  
24 meeting where the Commission on Presidential Debates'  
25 decision with regard to admitting third-party

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1 Mr. Vezeris.  
2 Q. Did you ever have a discussion as to  
3 whether Mr. Nader would be permitted to go to a Fox  
4 news trailer on October 3rd of 2000?  
5 A. On that day, no.  
6 Q. On that day did you ever have a discussion  
7 as to whether Ralph Nader would be allowed to go  
8 anywhere else on the University of Massachusetts  
9 campus on that day?  
10 A. No, we did not have a discussion -- with  
11 Mr. Vezeris is your question?  
12 Q. Did you ever have a discussion with anyone  
13 else on October 3rd of 2000 as to whether Mr. Nader  
14 would be allowed to go anywhere else on the UMass  
15 campus?  
16 A. The only other location and that was  
17 discussed with my client, was what you refer to as  
18 spin alley, when Mr. Nader would be permitted into  
19 spin alley if he did not have credentials to get in  
20 there or wasn't otherwise authorized or properly  
21 accompanied or so forth. And we were not going to  
22 let him just wander in to spin alley, which was  
23 within the secure area of the mags -- metal  
24 detectors, in that area.  
25 Q. Was it your understanding that the

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1 number of times between the discussion that you've  
2 been asking about and the end of the day. We were  
3 all in a relatively confined space and we were there  
4 for a number of hours. I'm sure we crossed paths a  
5 number of times.  
6 (Loss Exhibit No. 5 was  
7 marked for identification.)  
8 BY MR. FRIEDMAN:  
9 Q. We've marked as Exhibit 5, I believe it is  
10 three sheets of paper with photographs of various  
11 third-party presidential and in some cases vice  
12 presidential candidates. Have you ever seen this  
13 document before?  
14 A. Yes.  
15 Q. When did you first see it?  
16 A. October 2nd, 2000.  
17 Q. Where were you when you saw it?  
18 A. In my office.  
19 Q. And how did you happen to see the  
20 document?  
21 A. I had these pictures pulled off the  
22 Internet.  
23 Q. For what purpose?  
24 A. To take with me to Boston. As I testified  
25 earlier I knew one issue we were going to need to

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1 presidential candidates with tickets was discussed?  
2 A. I'm sorry, can you read that one back?  
3 THE REPORTER: "Question: So as far as  
4 you can recall, there was no meeting where the  
5 Commission on Presidential Debates' decision with  
6 regard to admitting third-party presidential  
7 candidates with tickets was discussed?"  
8 THE WITNESS: I am not aware of a meeting.  
9 I did not participate in a meeting that I recall. I  
10 wouldn't have a way of knowing if there were other  
11 meetings that I was not present for. Might have  
12 taken place where someone discussed it.  
13 BY MR. FRIEDMAN:  
14 Q. Did you learn of a system that was in  
15 place to handle a situation where a third-party  
16 presidential candidate came on the UMass campus on  
17 October 3rd of 2000?  
18 A. I -- I generally recall at this point that  
19 I would have been -- that there would have been some  
20 sort of radio transmission from someone at whatever  
21 location it was where a third-party candidate had  
22 been identified, in to either Mr. Vezeris or to  
23 myself, but I don't -- I don't know that I ever had a  
24 real clear understanding of, exact understanding of  
25 how that was going to work. And if I did, I

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1 decision made by the Commission on Presidential  
2 Debates was that Mr. Nader would simply not be  
3 allowed into the secure areas, the areas secured by  
4 the metal detectors?  
5 A. Our decision was that he would not be  
6 permitted into the debate hall. If he -- and that  
7 was really where our focus was, on the debate hall.  
8 I don't think our position was as fully formed with  
9 respect to the media center. If he had had proper  
10 credentials, I believe he would have been admitted to  
11 the media center, which is in the secure area you've  
12 just described.  
13 Q. Did the Commission on Presidential Debates  
14 have any role in deciding whether Mr. Nader could be  
15 on the UMass campus outside of the secure area?  
16 A. None whatsoever.  
17 Q. At some point did you learn that Ralph  
18 Nader was on a bus coming to the UMass campus?  
19 A. Yes.  
20 Q. How did you learn that?  
21 A. I believe John Vezeris told me.  
22 Q. Where were you at that time?  
23 A. I don't recall.  
24 Q. Did he tell you in person or over the  
25 radio?

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1 address on October 3 is what the Commission on  
2 Presidential Debates' position was going to be with  
3 respect to third-party candidates' attendance at the  
4 debate in the debate hall. And it occurred to me  
5 that if a decision was made that required the  
6 identification of these individuals, it might be  
7 useful to have pictures of at least the ones that I  
8 could locate relatively readily. So I had this.  
9 Q. That was because there was no check in  
10 where you would match somebody's name up if they came  
11 in with a ticket to go to the Clark auditorium: is  
12 that right?  
13 A. I don't think I actually went through that  
14 thought process.  
15 Q. Okay. What was done with this document?  
16 A. I brought it with me, I believe I had a  
17 few copies and I believe that I handed them out to  
18 the individuals who were going to be checking  
19 tickets -- CP -- people associated with the CPD. I  
20 told you there are a number of people associated with  
21 the CPD at these debates. I don't want to  
22 characterize their legal relationship, but they help.  
23 And it was those people who fit that description who  
24 were going to be actually checking tickets. And it  
25 was to those people that I gave copies of this

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1 certainly don't recall it as I sit here today.  
2 Q. Did you have a radio that evening?  
3 A. I did.  
4 Q. What frequency was it on? Secret Service,  
5 commission, police?  
6 A. It was commission only.  
7 Q. When you discussed with Mr. Vezeris what  
8 would be said if a third-party presidential candidate  
9 came on the campus, did you discuss with him that he  
10 should tell the candidate to please leave  
11 voluntarily?  
12 A. I'm quite certain we would not have  
13 discussed that, because we had -- our decision was  
14 whether he would be admitted in, and that was the  
15 scope of our decision, not whether he leaves some  
16 place if he is not yet in. So we wouldn't have had  
17 that discussion.  
18 Q. When you say your decision was whether he  
19 would be admitted in --  
20 A. To the --  
21 Q. In to what?  
22 A. Into the debate hall, Clark debate hall.  
23 Q. Did you have a discussion as to whether he  
24 would be admitted into the spin room, spin alley?  
25 A. I don't recall a discussion with

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1 A. I believe what happened and I want to be  
2 clear that my recollection is not terrific on this,  
3 my recollection is that over the radio he asked me to  
4 come meet him somewhere and he told me in person.  
5 Q. What happened after that?  
6 A. I don't have a recollection of the time  
7 that passed between my first learning that he was  
8 coming in and the time that Mr. Vezeris went out and  
9 had the exchange with Mr. Nader. So it is hard for  
10 me to answer what happened after that.  
11 Q. When Mr. Vezeris went out to speak to  
12 Mr. Nader, did you go with him?  
13 A. I did not go with him, I went.  
14 Q. Can you explain that?  
15 A. My recollection is that I trailed  
16 Mr. Vezeris on the walk out there and observed from  
17 some distance the exchange.  
18 Q. Did anyone go with Mr. Vezeris?  
19 A. I -- I can't remember what the walking  
20 procession was. I don't have it in my mind's eye  
21 whether Mr. Vezeris was walking by himself or with  
22 anyone else. I just don't recall.  
23 Q. Why did you trail him?  
24 A. It seemed --  
25 MR. MARKS: Is your question why he went

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1 BY MR. FRIEDMAN:

2 Q. Did you have any information that should  
3 Pat Buchanan arrive on the campus with a ticket to  
4 Clark, that he would disrupt the debate?

5 A. We -- Mr. Buchanan had been second only to  
6 Mr. Nader in terms of being very vocal about his view  
7 that the debates to be sponsored by the Commission on  
8 Presidential Debates were not legitimate in his view  
9 if he was not included. I don't recall as I sit here  
10 today any specific statements he made, so I can't  
11 comment on whether any of those statements were more  
12 precise -- the cause for concern with second to  
13 disruption.

14 Q. Were you aware of any specific information  
15 leading you to conclude that any of the other  
16 third-party candidates posed a risk of disrupting  
17 Clark if they were to gain access with a ticket?

18 THE WITNESS: Can you read that back,  
19 please?

20 THE REPORTER: "Question: Were you aware  
21 of any specific information leading you to conclude  
22 that any of the other third-party candidates posed a  
23 risk of disrupting Clark if they were to gain access  
24 with a ticket?"

25 THE WITNESS: Our concern was that if a

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1 third-party candidate who had not qualified for  
2 participation in the debate went to the trouble to  
3 get a ticket and attended the debate that it would be  
4 for the purpose of campaigning in some way, which  
5 seemed to imply the potential for disruption. But we  
6 did not have -- as I sit here now, I don't recall  
7 specific additional information of the type I  
8 reviewed concerned Ralph Nader.

9 BY MR. FRIEDMAN:

10 Q. In addition to the presidential election  
11 in the fall of 2000, there were elections for  
12 Congress and Senate as well; is that correct?

13 A. Correct.

14 Q. Were candidates for congressional or  
15 senatorial offices allowed to actually attend the  
16 debate in the Clark athletic center?

17 A. I have no information on that.

18 Q. So you don't know one way or the other  
19 whether a candidates from the Republican or  
20 Democratic party who were running for Senate or  
21 Congress were allowed to have tickets to the debate?

22 A. There was no decisions that were made on  
23 that topic, the issue was never presented.

24 Q. Were there ever any other issues presented  
25 with regard to restricting access to the debate with

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1 people who had tickets other than the restriction on  
2 people who were third-party candidates for president?

3 A. I don't remember participating in any  
4 other discussion.

5 MR. FRIEDMAN: I have no other questions.  
6 Scott you can inquire.

7 MR. BURKE: Thanks for asking, I don't  
8 have any.

9 MR. MARKS: None for me.

10 MR. FRIEDMAN: Andy has none so we're done.

11 MR. BURKE: I appreciate it. Howard, have  
12 a nice trip back.

13 (Whereupon, at 4:30 p.m., the taking of  
14 the instant deposition ceased.)

15  
16  
17 Signature of the Witness

18 SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of

19 \_\_\_\_\_, 20\_\_\_\_.

20  
21  
22 Notary Public

23 My Commission Expires: \_\_\_\_\_

24

25

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EXHIBIT 3

24.04.407.3481

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

----- X  
RALPH NADER, :  
Plaintiff, :  
v. : Case No.  
COMMISSION ON PRESIDENTIAL : 00-12145-WEY  
DEBATES, PAUL G. KIRK, JR., :  
FRANK J. FAHRENKOPF, JR., :  
JOHN VEZERIS, and :  
SERGEANT CHARLES MCPHAIL, in his:  
Individual capacity, :  
Defendants. :

----- X

Washington, D.C..

Wednesday, December 5, 2001

Deposition of FRANK J. FAHRENKOPF, JR.,  
called for examination by counsel for Plaintiff in the  
above-entitled matter, pursuant to notice, the witness  
being duly sworn by CARLA L. ANDREWS, a Notary Public in  
and for the District of Columbia, taken at the offices  
of Crowell & Moring, 2001 Pennsylvania Avenue, N.W.,  
Washington, D.C. 20004-2595, at 2:17 p.m., Wednesday,  
December 5, 2001, and the proceedings being taken down  
by Stenotype by CARLA L. ANDREWS and transcribed under  
her direction.

24.04.407.3482

18

1 Voters. And so as a result of those two studies and  
2 the two recommendations -- and as I remember, the 20th  
3 Century Fund actually put up the seed money-- check  
4 this -- to pay for it because it was no entity to pay  
5 for the -- to get the Commission off the ground. And,  
6 as I said, I think it was '87 that we formed it. And  
7 that's when we were on our way.

8 Q Was there an agreement between the two  
9 parties to create the CPD?

10 A In truth, at the very beginning, I think when  
11 the Commission was created and the recommendations were,  
12 the feeling was that this should be an agreement between  
13 the two parties, that it should be a bipartisan rather  
14 than a nonpartisan entity. And I remember that I got  
15 approval from the Republican National Committee, and I  
16 think Paul got approval from the Democratic National  
17 Committee to create -- that, we, as party chairmen,  
18 could be involved.

19 It became very clear to us, however, when  
20 lawyers started getting involved to draft documents and  
21 so forth that you probably couldn't do it if you were a  
22 bipartisan entity and that we had to be nonpartisan.  
23 And therefore, as we put the thing together and went  
24 away, it was clear that the parties could not have any  
25 say, control, input, funding, anything into the

19

1 Commission. And since we were created, then we went on  
2 the basis that we were going to be a nonpartisan entity.  
3 But there was no question that I think there probably --  
4 I am not sure what the recommendations of the CSIS study  
5 was, but it probably said that the parties should -- I  
6 have to go back and look. But we conducted ourselves as  
7 a nonpartisan.

8 Q So it was formerly created as a bipartisan  
9 entity; is that correct?

10 MR. MARKS: Initially.

11 THE WITNESS: Initially.

12 BY MR. ADKINS:

13 Q And then was it ever formally changed?

14 A No, it wasn't changed. We just changed the  
15 way we operated. It was going to be a nonpartisan  
16 entity. We cut off any input, control by the parties  
17 over the Commission.

18 Q Now, were you -- when you formed the CPD, the  
19 Commission on Presidential Debates, were both you and  
20 Mr. Kirk still chairs at your respective --

21 A Absolutely, yeah. If we formed it in  
22 '87 -- Paul and I left in '89 -- January of '89. So for  
23 the first -- I don't remember when we formed it in '87.  
24 But from the time of formation until January of '89, we  
25 were the party chairs.

20

1 Q Would it be fair to say, then, that it was  
2 bipartisan at least as long as you and Mr. Kirk were  
3 both the --

4 A Well, it was bipartisan from the standpoint  
5 that Paul and I were --

6 Q So the question is clear for the record.

7 MR. ADKINS: Could you read back the  
8 beginning of my question?

9 (The record was read back by the reporter.)

10 BY MR. ADKINS:

11 Q Of your respective National Committee?

12 A No, I wouldn't say that that was true. I  
13 would say that when we put it together back in '87  
14 leading up to the time that it was put together, we  
15 assumed that this was going to be a bipartisan  
16 operation. Once the Commission was created, it was very  
17 clear to us from our lawyers that we couldn't be a  
18 bipartisan. If we were bipartisan, we couldn't meet the  
19 requirements of the law, as we understood it, by which  
20 you qualified to be a sponsor of debates. And remember,  
21 we started the sponsorship in 1988. So it became very  
22 clear to us once we were created that we had to be a  
23 nonpartisan even though Paul and I were the party  
24 chairmen. And we tried to run it and operate it that  
25 way as a nonpartisan entity.

21

1 Q And did the two parties and/or the CPD put  
2 out a press release for when the entity was created?

3 A Yeah, sure we did. And that's why I am  
4 saying -- I think probably if you went back and looked  
5 at the recommendation -- I don't remember the  
6 recommendation from Harvard. But I sort of believe that  
7 the recommendation that came from the CSIS was urging  
8 the parties to do this. And when we first announced  
9 that we were creating this thing, we probably said that  
10 the two parties -- the theory was that if the two  
11 parties did it, that you could force the candidates to  
12 participate, that a candidate couldn't turn his or her  
13 back and walk away and not participate in the debates.

14 As I said -- but when it was clear the lawyers got  
15 involved and we were drafting the documents and so forth  
16 that we realized that we had to be a nonpartisan.

17 Q Well, I am a little curious as to how you  
18 could say it's not controlled by the parties if the two  
19 cochairs of the entity are still heads of the respective  
20 National Committee?

21 A We have different hats on. We all operate  
22 with different hats on. We operated with different hats  
23 on. And anyone who goes back and looks at the history  
24 of -- I don't know if the word abuse is the right  
25 word -- but either Paul or I have taken from our

201-04-407-3483

26

1 Q And what was that position?  
 2 A The position was that third-party candidates  
 3 would not be allowed to be present in the debate hall.  
 4 Q That was any third-party candidate?  
 5 A Any third-party candidate, although to be  
 6 candid with you, we only discussed really two --  
 7 Mr. Nader and Mr. Buchanan.  
 8 Q And who made this decision?  
 9 A The decision was made by -- well, there were  
 10 a number of people in the discussion. But  
 11 fundamentally, Paul Kirk and I, as cochairmen, made the  
 12 financial decision. Other people were involved in the  
 13 discussion process.  
 14 Q And you had the authority to make that  
 15 decision for the CPD?  
 16 A Yeah.  
 17 Q Did you run the decision past any of the  
 18 board of directors before making that decision?  
 19 A You know what? I don't remember. We may  
 20 have. I don't recall. I don't recall whether there  
 21 were board members present, some of the board members  
 22 attended and were in Boston, or not. I don't know. I  
 23 don't recall whether we did or not.  
 24 Q Do you remember if any of the board members  
 25 were at -- well, strike that. Did the decision to

27

1 exclude any third-party candidate from the October 3  
 2 presidential debate also extend to the other  
 3 presidential debates in the year 2000?  
 4 A Are you talking -- when you say debate, are  
 5 you talking about participating in the debate or are you  
 6 talking about being present physically in the audience?  
 7 Q I am still talking about in the context we  
 8 have been talking, which is as an audience?  
 9 A Yeah. After we made our decision in Boston,  
 10 it was fundamentally -- that was the policy that we  
 11 followed for the remaining debates, although we  
 12 never -- I don't recall ever sitting down and discussing  
 13 it. That was my understanding.  
 14 Q Did it also apply to the vice presidential  
 15 debate?  
 16 A I don't recall. I don't recall ever  
 17 discussing the vice presidential debate.  
 18 Q Any reason to think it wouldn't have applied  
 19 to the vice presidential debate?  
 20 MR. MARKS: Objection to the form of the  
 21 question. Calls for speculation.  
 22 THE WITNESS: Probably not. If the question  
 23 came up, I assume it might be consistent.  
 24 BY MR. ADKINS:  
 25 Q Okay. Now, when was the decision made to

28

1 exclude third-party candidates from the presidential  
 2 debates?  
 3 MR. MARKS: Time out. Again, just so we are  
 4 clear. You are talking about the decision that  
 5 third-party candidates could not be in the audience.  
 6 MR. ADKINS: Consistent with what we have  
 7 been talking about it. It will all apply to that unless  
 8 I change the context.  
 9 MR. MARKS: Let me just ask. It would be  
 10 better for all of us here, so we don't have a record out  
 11 of context, that you build that into your question, if  
 12 you don't mind.  
 13 THE WITNESS: That's all right. I will build  
 14 it into the answer.  
 15 MR. MARKS: That's fine. Either way. One of  
 16 you guys or the other so we have a good record.  
 17 BY MR. ADKINS:  
 18 Q You know what I am talking about?  
 19 A Yeah. I think the final decision that we  
 20 made with regard to not including third-party candidates  
 21 in the audience -- I think the debate was on Tuesday. I  
 22 think it was Tuesday -- was at a meeting Tuesday  
 23 afternoon.  
 24 Q That would be August 3?  
 25 A August 3.

29

1 Q The day of the debate?  
 2 A The day of the debate.  
 3 Q And when did that meeting occur?  
 4 A I know that it was made only after our  
 5 counsel got there. Lou Loss was not there, and so --  
 6 Q Let me stop you for a second. When you say  
 7 our counsel --  
 8 A He is counsel to the CPD. That Lou was  
 9 expected in -- I don't know what time. But my  
 10 recollection was that -- it was clearly in the  
 11 afternoon. I can't remember whether it was before the  
 12 walk-throughs or after the walk-throughs.  
 13 Q What do you mean by walk-throughs?  
 14 A The candidates who participated in the  
 15 debates come to the hall in the afternoon of the day  
 16 that they are going to debate. And they come in with  
 17 their staff and their aides and their handlers so that  
 18 when that come in at night they are not coming cold.  
 19 But they go in and we show them where the podium is,  
 20 whatever the situation is, where they stand. Usually  
 21 their people want to see -- have them stand at the  
 22 podium, and they shoot them with the cameras -- how many  
 23 cameras --  
 24 Q Rehearsal?  
 25 A Rehearsal as much as logistical background.

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1 quickly. That really wasn't the context that I -- and  
2 when I made the final decision, I wasn't worried about  
3 him running up on stage or crawling up on stage.

4 Q You were not, you say?

5 A No. I didn't think he was -- it was no way.  
6 There was no way anyone could get up on the stage.  
7 Secret Service is right there. But it was a question of  
8 whether or not he in the audience, based upon the  
9 statements that he made, would attempt to disrupt the  
10 debates. And, you know, I was convinced that we just  
11 couldn't take the risk of that disruption. And that's  
12 why I supported the decision to not allow him in the  
13 room.

14 Q Given your -- strike that.

15 A Let me say -- now that I think about it, we  
16 didn't make a decision to exclude all third-party  
17 candidates. I mean, that's wrong. We talked clearly  
18 about Ralph Nader and Pat. We had heard Pat was in  
19 town. We said, look, if Ralph does it, you know, Pat --  
20 we didn't know what was going to happen. Harry Brown  
21 and the other candidates were never -- I mean, we didn't  
22 talk about it in the context of third-party candidates.  
23 So you asked me earlier what would I have done if Harry  
24 Brown had shown up with a ticket. I don't know. I  
25 don't know what we would have done. But it was clear

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1 with Mr. Nader and Mr. Buchanan if they had showed up  
2 with legitimate tickets, our decision was to exclude  
3 them.

4 Q Are you changing your testimony from  
5 previous --

6 A I am trying to clarify it, I think. I think  
7 you very astutely, as a good lawyer, jumped on where I  
8 was going. That's not what happened. It was -- I mean,  
9 we didn't say, Shall we exclude all third-party  
10 candidates. It was a question of what happens if Ralph  
11 Nader and/or Pat Buchanan show up with a ticket into the  
12 hall, what we will do? That was the decision that we  
13 reached. It didn't go any farther than that.

14 Q This sounds like a change of your prior  
15 testimony.

16 A Well, I don't think it is. I think it is a  
17 clarification. I think I misspoke.

18 Q Okay.

19 A But you are going to take the deposition of  
20 my fellow people who were in the meeting. But that's my  
21 recollection.

22 Q Let me explore that a little bit later. You  
23 said you knew Ralph Nader. I got the impression that --  
24 maybe it wouldn't be picked up on the transcript -- that  
25 you felt you knew him well and have known him for a long

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1 period of time.

2 A I have known him for a long period of time,  
3 but I didn't know him well. I mean, Ralph and I over  
4 the years have been on television shows where we have  
5 debated issues and, you know, the talking-head type  
6 shows. And we knew that if I saw Ralph coming down the  
7 street, he knew me and I knew him. I would say, hi,  
8 Ralph, how are you. But we were not, you know, close  
9 friends. I didn't know him personally other than in  
10 that context.

11 Q But Mr. Nader has been involved in the  
12 political environment for a long time?

13 A Oh, yes, absolutely.

14 Q So you have seen him in action?

15 A I have known him in that context from the  
16 Carver days.

17 Q Do you think it would be uncharacteristic of  
18 Mr. Nader to try to make a scene outside of the rules,  
19 including by making any noise or protestation within the  
20 debate while it was taking place?

21 A In light of the statements as they were  
22 related to me that he allegedly made, it was my own view  
23 and I came to be convinced this way that, gees, this guy  
24 has been saying these things on national television and  
25 cameras. He sort of laid down a marker. I don't think

45

1 Ralph would run up to the stage and do that, but he  
2 would very well stand up in the audience, stand up on a  
3 chair and say, oh, I could be on that stage, why won't  
4 you let me on the stage. That's what I was concerned  
5 about. And I felt that that would be extremely  
6 disruptive.

7 Q And you felt that was a possibility with  
8 Mr. Nader?

9 A Yeah, I did.

10 Q Have you ever seen Mr. Nader act outside  
11 rules in any other circumstance?

12 A I am not sure I have never been around enough  
13 to see him in a context where there were rules and  
14 whether or not he would. I don't know.

15 Q In terms of your personal experience, has he  
16 ever gone outside of the norm of reasonable and  
17 appropriate conduct?

18 MR. MARKS: Objection. Lack of foundation.

19 THE WITNESS: I have never seen him -- I  
20 mean, I don't agree with positions that Ralph has taken  
21 over the years. I don't agree with positions a lot of  
22 anyone people take. But I don't know of him violating  
23 the law or violating any rules in any context where  
24 there were rules.

25 BY MR. ADKINS:



EXHIBIT 4

24-04-407-3486

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